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AGING COMMITTEE COMMENT ON HB # 5289 PROTECTIVE SERVICES IN SUPPORT OF HB # 5283, RESTORING ASSISTANCE FOR MEDICARE PART D BENEFICIARIES FEBRUARY 25, 2016

My name is Kevin Brophy, and I am the Director of Elder Law for Connecticut Legal Services, a non-profit legal aid agency. My testimony is submitted on behalf of Connecticut's Legal Services Programs, my low income elderly clients, and the many low income elderly residents of CT.

- HB # 5289, Protective Services for Vulnerable Persons- While we do not oppose HB #5289, we would like to take this opportunity to comment on changes made last year to the statutory provisions regarding Protective Services for the Elderly. The legislature passed P.A. § 15-233, An Act Concerning Protective Services for Suspected Elderly Abuse Victims. This bill gave, among other things, additional powers to the Department of Social Services' Protective Services for the Elderly Unit to investigate elder abuse. One of those powers was to establish a procedure for the Protective Services Unit to go to Probate Court and gain access to an elderly person's home without their permission. Section 9 of P.A. § 15-233 is now codified at Conn. Gen. Stat. § 17b-464.

A person's home is his or her castle. Their right to privacy is protected by the Due Process Clause of the 14th Amendment to our U.S. Constitution. Before the state may enter a person's home, the state must comport with basic due process. We must properly balance the interest of the individual's right to privacy with the state's responsibility to protect its citizens, in this case elderly persons who may be exploited, abused or neglected.

We don't believe that Section 9 of P.A. § 15-233, codified at Conn. Gen. Stat. § 17b-464(e), strikes the correct balance. In Fish v. Fish, Jr., 285 Conn. 24 (2008) the Connecticut Supreme Court stated that "[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants." Id. 70.

The important and constitutionally protected private interest at stake is one's right to privacy in their home. Under Section 9 of P.A. § 15-233, codified at Conn. Gen. Stat. § 17b-464(e), in an ex parte hearing in Probate Court, Protective Services Unit only has to prove the minimal standard of "reasonable cause" that the elderly person is at risk of imminent physical or mental harm, is in need of protective services, and that Protective Services Unit is being denied access to the home.

We recommend that Conn. Gen. Stat. § 17b-464(e) be amended and that Protective Services be required to meet a higher standard of "clear and convincing evidence" before the Probate Court can issue an order to enter the elderly person's home without his or her permission (see attached Substitute Language for HB # 5289). That standard provides a better balance between the right of the elderly person's privacy in his or her home and the state's interest in protecting its citizens. In Santosky v. Kramer, 455 U.S. 745 (1982), the United States Supreme Court "mandated an intermediate standard of proof—**clear and convincing evidence**—when the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money.... Notwithstanding the state's civil labels and good intentions ... this level of certainty [is] necessary to preserve fundamental fairness in a variety of *government-initiated proceedings* that threaten the individual involved with a significant deprivation of liberty or stigma..." Id. 754-756. (emphasis added).

• Support HB # 5283, Restoring State Assistance for Medicare Part D Beneficiaries- We are requesting the restoration of the \$15.00 prescription co-pay cost cap for individuals who are on both Medicare and Medicaid. Those individuals are called "dually eligible." Last year, the FY 2016 – 2017 State Biennium Budget eliminated this wrap-around protection for Medicare Part D covered drugs.

While we recognize that there are many competing fiscal interests, removing the cap has created a financial hardship for those who take many drugs. All of the "dually eligible" have limited income and many are in poor health. It is estimated that 14% of the "dually eligible" in Connecticut fill seven or more prescriptions a month. The costs of the co-payments range from \$1.20 to \$7.40 per drug.

If you are on Medicaid only, the state pays for the full cost of your drugs. The state recognizes that it is cost effective to do so. If the beneficiary does not fill their prescriptions, he or she might end up in the emergency room or need a hospital stay.

The "dually eligible" are in the same position as those beneficiaries who are only on Medicaid. Please restore this \$15.00 a month cap. It is smart public policy to do so!

Thank you for giving me the opportunity to testify and considering the needs of Connecticut's most vulnerable seniors.

SUBSTITUTE LANGUAGE FOR HB 5289

Section 17b-464 (e) of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage):

(e) If the Probate Court finds that (1) there is [reasonable cause] clear and convincing evidence to believe that an elderly person is at risk of imminent physical or mental harm and may be found at the premises described in the petition, (2) such person may be in need of protective services, and (3) access to such person has been refused, the court shall grant the petition and issue an order, ex parte and without prior notice, authorizing the commissioner, accompanied by a police officer or other law enforcement official, and any other person the commissioner determines necessary to enter the premises to conduct an assessment to determine whether the elderly person named in the petition is in need of protective services. The ex parte order shall expire ten days after the order is issued.

